IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 24645 of 2007(H)

PETITIONER:

AJITH KUMAR K.S.,
S/O SAHADEVAN, AGED 46, RESIDING AT KOYIPILLY HOUSE, PALLIPORT P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:
---

1. DEBTS RECOVERY TRIBUNAL, ERNAKULAM, KERALA HOUSING BOARD BUILDING, PANAMPILLY NAGAR, COCHIN-36.

2. M/S STATE BANK OF INDIA, CHERAI BRANCH, REP.BY ITS MANAGER.

3. CHIEF MANAGER, STATE BANK OF INDIA, ALWAYE, ERNAKULAM.

R2 AND R3 BY ADV. SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 24645 OF 2007

Dated this the 20th day of August, 2007

JUDGMENT

Petitioner availed housing loan from the second respondent-Bank. Even though loan was granted in 2003 and petitioner had 15 years time to repay the instalments, loan was recalled on account of chronic default for nearly three years. Monthly instalment payable was Rs. 15,400/-. The prayer in the Writ Petition is for direction to respondents to grant time for the petitioner to settle the liability. Second respondent filed counter affidavit and opposed the plea on the ground that the petitioner was granted time by DRT and by this Court on an earlier occasion vide Ext.P6 judgment and petitioner committed default. However, I find justification for this Court to grant time once more for more than one reason. In the first place, petitioner has paid Rs. 3 lakhs on 30.7.2007 and the payment has wiped out instalment arrears for nearly two years. Secondly the scheme of repayment of loan originally granted is thoroughly unrealistic because without any material towards proof of petitioner's monthly income, the Bank

granted petitioner instalment scheme for payment at the rate of Rs. 15,400/- per month. If a man has to repay Rs. 15,400/- per month, he should necessarily earn above Rs. 30,000/- per month. Petitioner has no known source of regular income which is proved by default. Default happened because the Bank failed to forsee petitioner's incapacity to honour the commitment. The only way for the petitioner to settle liability is to sell part or full property and I feel if petitioner sells the property, petitioner will be a net gainer and if the Bank sells the property in recovery proceedings, petitioner will be ruined. In the circumstances, I grant time till 30.11.2007 to the petitioner to sell property or otherwise to settle the liability. Petitioner is free to negotiate for sale of any part of, or full, property and can enter into agreement for sale. However, sale deed will be executed only after clearance from the Bank through payment or under arrangement for payment between the petitioner and the buyer acceptable to the Bank. Since time is granted on petitioner undertaking to settle the liability before 30.11.2007 there will be direction to the petitioner to vacate from the premises and hand over the entire property free of possession

to the Bank to sell the property after 30.11.2007. However, in between the petitioner shall not encumber or part with possession of the property without permission from the Bank, which can be granted on settlement of liability. If the petitioner commits default in payment or fails to hand over possession of the property and the building to the second respondent, there will be direction to the Sub Inspector of the local police station to evict the petitioner forcibly and hand over possession to the second respondent on his producing copy of this judgment and on making a request in this behalf. There will be direction to the respondents not to proceed with sale of the property or not to dispossess the petitioner from the premises until 30.11.2007.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge